IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals
Judges Jessica R. Cooper and Mark J. Cavanagh (Majority)
And Judge Brian K. Zahra (Dissenting)

CASCO TOWNSHIP, COLUMBUS TOWNSHIP, PATRICIA ISELER and JAMES P. HOLK,
Plaintiffs/Counter-Defendants/Appellants,

v

CANDICE S. MILLER, MICHIGAN SECRETARY OF STATE, CHRISTOPHER M. THOMAS, DIRECTOR, BUREAU OF ELECTIONS, and CITY OF RICHMOND,
Defendants/Appellees,

and

WALTER K. WINKLE and PATRICIA A. WINKLE,
Intervening Defendants and Counter-Plaintiffs/Appellees
v

CASCO TOWNSHIP and COLUMBUS TOWNSHIP,
Counter-Defendants/Appellants.

Supreme Court Case No. 126120

Court of Appeals Case No. 244101

Ingham County Circuit Court Case No. 02-991-CZ

BRIEF ON APPEAL – APPELLEE CITY OF RICHMOND

ORAL ARGUMENT REQUESTED

Eric D. Williams P33359
Rex A. Burgess P42779
for the City of Richmond
524 North State Street
Big Rapids, MI 49307
(231)796-8945

Foster, Swift, Collins & Smith, P.C.
Attorneys for Appellants
By: William K. Fahey, P27745
Ronald D. Richards, Jr., P61007
313 S. Washington Square
Lansing, MI 48933-2193
517-371-8150

Kerr, Russell and Weber, PLC
By: Robert J. Pineau, P39386
Attorneys for Appellees Winkle
500 Woodward Ave, Ste 2500
Detroit, MI 48226
313-961-0200

John H. Bauckham, P10544
Attorney for Amicus MTA
458 West South Street
Kalamazoo, MI 49007
616-382-4500

Heather S. Meingast, P55439
Assistant Attorney General
Public Employment, Elections & Tort Div.
6520 Mercantile Way, Ste. 1
Lansing, MI 48909
517-335-0415

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Statutes

Public Acts

Local Acts

Constitution

Other Authorities

Opinion

COUNTER-STATEMENT OF QUESTIONS PRESENTED

I. **WHETHER A SINGLE DETACHMENT PETITION AND VOTE THEREON MAY ENCOMPASS TERRITORY TO BE DETACHED TO MORE THAN ONE TOWNSHIP PURSUANT TO THE HOME RULE CITIES ACT?**

PLAINTIFFS-APPELLANTS SAY:	"YES"
DEFENDANTS-APPELLEES SAY:	"NO"
INTERVENING DEFENDANTS APPELLEES SAY	"NO"
THE CIRCUIT COURT SAID:	"NO"
THE COURT OF APPEALS SAID:	"NO"

II. **WHETHER THE PETITION CONFORMS TO THE PROVISIONS OF THE HOME RULE CITIES ACT?**

PLAINTIFFS-APPELLANTS SAY:	"YES"
DEFENDANTS-APPELLEES SAY:	"NO"
INTERVENING DEFENDANTS APPELLEES SAY	"NO"
THE CIRCUIT COURT SAID:	DID NOT SAY
THE COURT OF APPEALS SAID:	DID NOT SAY

III. **WHETHER A WRIT OF MANDAMUS SHOULD ISSUE TO COMPEL THE SECRETARY OF STATE TO ISSUE A NOTICE DIRECTING AN ELECTION ON THE CHANGE OF BOUNDARIES SOUGHT BY PLAINTIFFS-APPELLANTS?**

PLAINTIFFS-APPELLANTS SAY:	"YES"
DEFENDANTS-APPELLEES SAY:	"NO"
INTERVENING DEFENDANTS APPELLEES SAY	"NO"
THE CIRCUIT COURT SAID:	"NO"
THE COURT OF APPEALS SAID:	"NO"

INTRODUCTION

This appeal involves a dispute over the boundaries between the City of Richmond, Casco Township, and Columbus Township. Territory was detached from Casco Township and Columbus Township and annexed to the City of Richmond by an order of the Boundary Commission. That same territory was proposed to be detached from the City of Richmond and annexed to Casco and Columbus Townships, respectively, pursuant to MCL 117.6 of the Home Rule Cities Act. The petition proposing the detachment combined the two questions in a manner purporting to create one ballot proposal and one district to be affected, and the Secretary of State declined to certify and order the election. The Circuit Court declined to issue a writ of mandamus, and the Court of Appeals majority affirmed, Judge Zahra dissenting.

This is the latest release in Michigan's long running series on territorial turf wars between local governmental units and affected residents within them. The Michigan Legislature, Boundary Commission, Judiciary, and electorate have struggled to identify and follow relevant legal principles and public policy in analyzing and deciding municipal boundary battles. Michigan's annexation and detachment law is complicated and inconsistent; individual cases are charged with emotion and laced with political controversy. Fortunately for all concerned, there is a statute that controls. Whether ambiguous or not, the outcome of this case must be determined by the applicable subsections of the Home Rule Cities Act by which petitions and ballot proposals are developed and submitted to the legislatively described district to be affected. It is each

question calling for a boundary change that determines the district to be affected, not the combination of questions in a petition.

The entire case rests on the language of §117.9, which defines the district to be affected in a manner contrary to the position of the Plaintiffs-Appellants, as becomes apparent when examined in the context of other relevant sections of the Home Rule Cities Act, and according to reported decisions describing the legal and historical background of municipal boundary changes in Michigan.

STATEMENT OF FACTS

Plaintiffs-Appellants' Statement of Facts is complete and correct.

ARGUMENT

I. A DETACHMENT PETITION THAT COMBINES TWO DISTRICTS TO BE AFFECTED CANNOT BE USED TO DETACH TERRITORY TO MORE THAN ONE TOWNSHIP BY ONE BALLOT QUESTION PURSUANT TO THE HOME RULE CITIES ACT.

Summary of Argument

The district to be affected by a proposed detachment of city territory to a township is the city from which territory is to be detached and the township to which territory is to be annexed, as defined in §117.9.

Standard of Review

"Questions of statutory interpretation are questions of law, which will be reviewed de novo." *In re MCI Telecommunications*, 460 Mich 396, 413; 596 NW2d 164 (1999).

Statutory Construction

The Supreme Court's obligation in construing provisions of the Home Rule Cities Act "is to discern the legislative intent that may reasonably be inferred from the words expressed in the statute by according those words their plain and ordinary meaning." *Sotelo v Township of Grant*, 470 Mich 95, 100; 680 NW2d 381 (2004). The words in §117.6, §117.8, §117.9, and §117.11 provide answers to all of the questions raised by the Appellants, although the "district to be affected" must be interpreted in the context of the Home Rule Cities Act, and in the light of prior Supreme Court decisions.

> As we have noted on many occasions, a statutory term cannot be reviewed in isolation, but must be construed in accordance with the surrounding text and the statutory scheme. "Contextual understanding of statutes is generally grounded in the doctrine of noscitur a sociis: 'it is known from its associates,' see Black's Law Dictionary (6th ed.) p. 1060. This doctrine stands for the principle [of interpretation] that a word or phrase is given meaning by its context or setting." Although a phrase may mean one thing when read in isolation, it may mean something substantially different when read in context.

Breighner v Michigan High School Athletic Ass'n, 471 Mich 217, 232; 683 NW2d 639 (2004) (citations omitted). While the same outcome can be reached by finding the statute ambiguous and then interpreting it, there is no need to do so. The Court of Appeals

reached the correct destination, but followed an unnecessarily circuitous route to get there.

The Home Rule Cities Act

Relevant excerpts of §117.6, §117.9, and §117.11 are quoted here, with emphasis added. §117.6:

> Cities may be incorporated or ***territory detached therefrom or added thereto***, or consolidation made of 2 or more cities or villages into 1 city, or of a city and 1 or more villages into 1 city, or of 1 or more cities or villages together with additional territory not included within any incorporated city or village into 1 city, ***by proceedings originating by petition therefore signed by qualified electors who are freeholders residing within the cities, villages, or townships to be affected thereby...***

§117.9(1):

> ***The district to be affected by every such proposed*** incorporation, consolidation, or ***change of boundaries shall be deemed to include the whole of each city, village, or township from which territory is to be taken or to which territory is to be annexed.***

§117.11:

> ***The question of making the incorporation, consolidation, or change of boundaries petitioned for, shall be submitted to the electors of the district to be affected...***

This text plainly describes the Legislature's intention that every proposed incorporation, consolidation, or change of boundaries be submitted to "the whole of each city, village, or township from which territory is to be taken or to which territory is to be annexed."

> We, the undersigned qualified and registered electors, residents and freeholders in *Casco Township*[1], in the County of St. Clair, State of Michigan, respectfully petition for the detachment of certain territory described hereafter from the City of Richmond to Casco Township and Columbus Township (whichever Township each portion of the described territory was originally taken from), to be submitted at an election to the qualified electors of the City of Richmond, Casco Township and Columbus Township, as provided for by 1909 PA 279, as amended. The territory proposed to be detached from the City of Richmond to Casco Township and Columbus Township is legally described in the attached Exhibit A and depicted in the map attached as Exhibit B which exhibits are incorporated in and made part of this petition. (Appellants Appendix *15a*).

The proposed change of boundaries between the City of Richmond and Casco Township must be submitted to the district to be affected, which "shall be deemed to include the whole of each city, [Richmond] village, or township [Casco] from which territory is to be taken [Richmond] or to which territory is to be annexed [Casco]. The proposed change of boundaries between the City of Richmond and Columbus Township must be submitted to the district to be affected, which "shall be deemed to include the whole of each city, [Richmond] village, or township [Columbus] from which territory is to be taken [Richmond] or to which territory is to be annexed" [Columbus].

In this case the petition proposes two changes of boundaries: one involving the City of Richmond and Casco Township, and another one involving the City of Richmond and Columbus Township. Each proposed change of boundaries necessarily implicates a different district to be affected according to the formula provided by the

[1] The petition was presented to electors in Columbus Township and the City of Richmond with the words "Casco Township" replaced by "Columbus Township" or "the City of Richmond."

Legislature, because each proposed change of boundaries involves a different township to which territory will be annexed. If multiple tracts of territory were proposed to be detached from the City of Richmond and annexed to Casco Township, then only one district to be affected would be involved, including the City of Richmond from which territory would be taken, and Casco Township to which territory would be annexed. Where city territory is proposed to be detached and annexed to two townships, two different districts to be affected are involved.

There is no Gordian knot here to be untied. The district to be affected by ***"every such proposed change of boundaries,"*** regardless of being combined with another proposed change of boundaries, ***"shall be deemed to include the whole of each city, village, or township from which territory is to be taken or to which territory is to be annexed."*** In this case there are two proposed changes of boundaries with a single common city from which territory is to be taken, but because the two proposed changes of boundaries involve two different townships to which territory is to be annexed, there are two different districts to be affected. Appellants pay little attention to the phrases in §117.9 that are outcome determinative***: the district to affected by every such proposed change of boundaries shall be deemed to include the whole of each political unit from which territory is to be taken or to which territory is to be annexed.*** With two different boundary change proposals affecting two different city-township combinations, the Legislature's definition specifies two different districts to be affected.

Combining the two districts to be affected, Richmond-Casco and Richmond-Columbus, is contrary to the plain language and direction of §117.9. Doing so would

result in Casco Township electors voting on the proposed Richmond-Columbus change of boundaries, and Columbus Township electors voting on the proposed Richmond-Casco change of boundaries. This would violate the act by submitting a proposed change in boundaries to electors outside the actual district to be affected by each proposal or question.

According to the criteria provided by the Legislature, the district to be affected consists of the whole (rather than a portion) of each city, village, or township from which territory is to be taken or to which territory is to be annexed. Casco Township will not have territory taken from it, and will not have territory annexed to it, by the proposed change of boundaries between the City of Richmond and Columbus Township. Therefore, Casco Township cannot be within the district to be affected by the proposed change of boundaries between the City of Richmond and Columbus Township. The answer is simple, direct, and found in the Legislature's definition of the district to be affected.

Columbus Township will not have territory taken from it, and will not have territory annexed to it, by the proposed change of boundaries between the City of Richmond and Casco Township, so Columbus Township cannot be within the district to be affected by the proposed change of boundaries between the City of Richmond and Casco Township.

Appellants offer no explanation of how Casco Township can or should be included in the district to be affected by the proposed change of boundaries between the City of Richmond and Columbus Township. Appellants offer no explanation of

how Columbus Township can or should be included in the district to be affected by the proposed change of boundaries between the City of Richmond and Casco Township. Instead, Appellants focus on segments of the various statutory sections that refer to a petition in singular form, §117.6 and §117.11, or multiple clerks to receive notice, or multiple political units to be included in the district. That focus is misplaced and unwarranted, because the statutory framework was designed to encompass petitions to incorporate cities, consolidate cities, and change boundaries of cities, which in the event of consolidation according to §117.6 might include "2 or more cities or villages" or "1 or more cities or villages together with additional territory not included within any incorporated city or village." The general law for the incorporation of cities was drafted broadly, and also embraced consolidations and boundary changes. The common factor was the involvement of a city that would be incorporated, consolidated, or subject to a boundary change.[2] The mechanism for determining the district to be affected was fundamentally simple, involving the whole of each city, village, or township from which territory was to be taken or to which territory was to be annexed by a particular proposal.

It is clear that the district to be affected by the Richmond-Casco boundary change includes the City of Richmond and Casco Township. It is clear that the district to be affected by the Richmond-Columbus boundary change includes the City of Richmond and Columbus Township. Putting the two proposed boundary changes in the same

[2] An almost identical procedure was adopted for villages; see §78.2 [§117.6], §78.4 [§117.8], [§117.9], §78.7 [§117.11].

petition does nothing by way of the Home Rule Cities Act to modify the legislatively defined district to be affected by each proposed boundary change. But for statutory deficiencies in how the petition was drafted and circulated, and the potential creation of an enclave of city territory in Columbus Township, Plaintiffs-Appellants would be entitled to elections on the two boundary change proposals in the two districts to be affected. However, Plaintiffs-Appellants are not entitled to a single election in an unauthorized hybrid district to be affected by the two boundary change questions.

Prior to the 1970 amendment §117.9 included this text:

> Provided, however, that territory may be attached or detached to or from cities having a population of 15,000 or less if a majority of the electors voting on the question in the city to or from which territory is to be attached or detached, and a majority of the electors from that portion of the territory to be attached or detached as the case may be, both vote in favor of such proposition.

Both the electors of the city and the majority of the electors from the portion of the territory to be attached or detached had to vote in favor of a proposition in order for it to pass. Electors in the balance of the whole township did not vote on the question.

The change in §117.9 allows the electors of the entire township to vote on the question, along with the electors of the entire city. The electors of the entire City of Richmond and the entire Township of Columbus vote on the proposed boundary change affecting them, and the electors of the entire City of Richmond and the entire Township of Casco vote on the proposed boundary change affecting them. The Legislature broadened the voting on boundary change proposals to include the entire district to be affected by deleting the limiting voting provisos from §117.9. However,

the Legislature left the definition of the district to be affected alone, relying on §117.9 and other sections of the Home Rule Cities Act to control how every proposed change of boundaries would be originated by petition signed by qualified electors, and then decided by the voting of qualified electors. Therefore, the district to be affected by every proposed change of boundaries remained the same, being the whole of each city, village, or township from which territory is to be taken or to which territory is to be annexed by the proposed boundary change. This deletion of voting provisions cannot be interpreted to authorize the electors of one township to vote on the detachment of city territory to a different township. There is no conceivable legal or logical reason for allowing such a vote, and nothing in the Home Rule Cities Act warrants it.

Appellants rely on the use of the word "each" in §117.9. However, as noted by the Court of Appeals, any detachment proceeding will involve two municipalities. The word "each" in §117.9 could refer to any of the following, depending on the circumstances of incorporation, consolidation, or boundary change: each of one city and one township, or each of two cities, each of two townships, each of one city, village and township, or each of one city and two or more townships.

The Court of Appeals stated:

> Contrary to plaintiff's argument, we do not find that this language explicitly states that a single election is sufficient to detach territory from a city into more than one township. Nor, however, do we find that the statute definitely states the opposite. The legislature's mere use of the phrase "the district" fails to clarify where a vote can be taken, especially when the very controversy is what the legislature intended "the district" to entail. Similarly, the use of the language like "each city, village, or township" does not clearly imply that

> more than one township could be involved in such a vote. It seems equally as likely that the word "each" is used because at least two governmental entities are involved in every detachment vote.

Casco Twp v Secretary of State, 261 Mich App 386, 392; 682 NW2d 546 (2004). Of the two parcels annexed to the City of Richmond, one was zoned commercial and one was zoned industrial. See map, Appendix *4b*. Main Street, which runs through the middle of the City, constitutes the principal commercial district within the City. The City's industrial zoned districts mostly are occupied. The electors of the City of Richmond may want to add industrial area to its tax base while rejecting commercial area that would compete with existing city businesses. Since the townships cannot currently provide sewer and water to either parcel, if either parcel is detached from the City it is unlikely that the detached parcel would be developed any time in the near future, particularly as commercial or industrial property. This case provides a practical example of why the two detachment proposals should be submitted to the two separate districts to be affected by the proposed boundary changes.

The trial court relied on *Cook v Kent County Board of Canvassers*, 190 Mich 149; 155 NW 1033 (1916), in which the Supreme Court reviewed an annexation case with two annexation proposals involving the City of Grand Rapids, Paris Township, and Wyoming Township. The proposals were submitted to the electors of the City and both townships, just as Appellants propose to do with their detachment proposals. The Court focused on the voting provisions of §117.9 that have been repealed but found no

clear direction there. The Court was bothered by the notion that voters in one township might determine the result for voters in the other township.

> To permit the favorable minority in that portion of Paris township to be annexed to overcome the adverse majority in that portion of Wyoming township to be annexed ***would, in our opinion, be contrary to the spirit of section 9, and we believe, under a fair construction of the language, it is likewise contrary to its express terms.***

Cook, pages 155-156, emphasis added. While described in terms of voting strength rather than different districts to be affected by each proposed change of boundaries, the Court rejected the outcome sought by Appellants in this case. The Supreme Court decided this issue against the position advocated by Appellants, noting "the evils which would flow from a contrary holding." *Cook*, page 154. More precise analysis leads to a clearer basis for the holding: only those electors in the district to be affected by the proposed change of boundaries can vote on the question. Because the electors in Paris Township were not in the district to be affected by the proposal to annex territory from Wyoming Township, the Paris Township electors should not have voted on the proposal to annex part of Wyoming Township. The approach remains correct today. The principal issue in *Cook* was stated on page 154:

> It is the contention of defendants that the words "district proposed to be annexed" should be construed to mean either a part of a single township to be annexed or the several parts of two or more townships which might in one proceeding be annexed. Plaintiff's contention that the "district to be annexed" means that portion of each township to be annexed, and that the statute requirement of a majority vote in the "district to be annexed" means that that portion of each township to be annexed must vote affirmatively before annexation can follow.

The Plaintiff raised essentially the same argument (at pp 151-152) now asserted by the City and the Secretary of State in this case, i.e.:

> . . . the construction of the law allowing the voters of Paris Township to decide whether or not a portion of Wyoming Township should be annexed is unconstitutional and void, in that: (a) It is an unlawful and unconstitutional delegation of the legislative power inherent in the legislature to the voters of Paris Township; (b) in that it usurps the right of the township of Wyoming to decide for itself whether it and that portion thereof proposed to be annexed desire such annexation.

This issue centered on the construction of §117.9. In analyzing the statute, the *Cook* court at page 154 stated:

> While it may be conceded that the language of the statute, without straining, will support either of the foregoing views, we are of the opinion that the contention of the plaintiff should be sustained as being more nearly consonant with justice and the principles of local self government which have been so frequently enunciated by this court.

The Supreme Court's rationale was very close to what the Court of Appeals expressed in rejecting Plaintiffs-Appellants' arguments in this case. The principle enunciated in *Cook* remains persuasive. Electors in local governmental units control their own boundaries to the extent allowed by law provided by the Legislature. When a boundary change issue that is subject to a referendum arises between two municipalities, the electors in those two municipalities vote on the issue because they are within the statutorily defined district to be affected. The reasoning in *Cook* was sound in 1916 and remains sound 89 years later. Applied to the facts of the present

case, only the electors in the district to be affected by a proposed boundary change are qualified to originate the proceeding and vote on the question.

Other states have looked at this issue, and despite differences in specific statutes and state constitutions have arrived at essentially the same conclusion. In *Lake Wales* v *Florida Citrus Canners Coop*, 191 So2d 453, 457 (1966), the court stated:

> Further, Section 21, Article III, of our constitution provides that a referendum election shall "be called and held in the *territory affected.*" (emphasis supplied). **The ballot to be submitted to the qualified electors** under Chapter 63-1513 **makes it possible for a qualified elector residing in area 2 to vote for the annexation of area 1 whereby the only territory affected would be the City of Lake Wales and area 1. This is violative of the constitutional mandate of** Section 21, Article III, **requiring the election to be called and held in *territory affected*.** [emphasis added]

Appendix *27b*. Similarly in *People v San Jose*, 222 P2d 947, 949 (1950), the Court ruled:

> We have this simple case. Two parcels of land, both contiguous to the boundaries of the city, but both noncontiguous to each other, were both sought to be annexed in a single election presented to the electors as one proposition. A clear example of the wisdom of this statute is found in a result. The two separate parcels are designated as precinct No. 1 and precinct No. 2 respectively. The vote in precinct No. 1 (for annexation of both parcels) was 80 for annexation to 40 against; the vote in precinct No. 2 (on the same proposition) was 48 for annexation and 74 against. It is conceivable that the electors in precinct No. 2 might have favored the annexation of that parcel but objected to the annexation of the other parcel. It is also conceivable that the electors in precinct No. 1 favored the proposition only because it included parcel No. 2. But aside from any speculation as to the intentions of the electors, ***we hold that the election was improperly held and that the electors of each parcel were entitled to vote on the proposition of the annexation of that parcel separately.*** [emphasis added]

Appendix *33b*. These cases are consistent with the City of Richmond's position that the electors of the City of Richmond and the Township or Casco vote on the proposed change of boundaries that affects them. The electors of the City of Richmond and the electors of the Township of Columbus vote on the proposed change of boundaries that affects them.

This is not the first time the Supreme Court has been called upon to interpret the Home Rule Cities Act, and §117.9 in particular. See *Ford Motor v Village of Wayne*, 358 Mich 653; 101 NW2d 320 (1960), with emphasis added:

> The question presented is whether pertinent provisions of the city home rule act as amended require that, in an election to incorporate as a city a village and contiguous territory located in the same township, an affirmative majority of the votes within such village, and a like majority in the territory to be included in the area affected outside of the village, is required in order to accomplish the proposed action. ***Concededly the problem presented is one of statutory construction. This requires that applicable provisions be interpreted in accordance with the general plan of the legislature as evidenced by the provisions of the act.*** Section 9 of the statute ... ***§117.9 ... has specific reference to the 'affected district' in cases*** of incorporation, consolidation, or ***change of boundaries, indicating the procedure to be followed in each such proceeding,*** with particular reference to the question as to who may vote in each, and the basis for determining the result.

The task before the Supreme Court currently is quite similar, although the fact pattern involves detachment of city territory to two townships, and the voting provisions in §117.9 have been deleted by the Legislature since the quoted case was decided.

Another similar issue was considered by the Supreme Court in *Warren Products Inc v Northville*, 356 Mich 481; 96 NW2d 764 (1959), requiring statutory interpretation of §117.9 and §117.11. The Court was blunt in its decision, page 486:

> The answer is apparent. The procedure to be used must follow the method provided in section 11 as supplemented and limited by the provisions of section 9 applying to cities of that size. Any other approach would do violence to the language of the statute.

At that time §117.9 specified the voting, so there was less emphasis on determining the district to be affected.

In *Walsh v Hare*, 355 Mich 570; 95 NW2d 511 (1959), the Supreme Court reviewed a package of annexation questions prepared according to §117.6, just as Plaintiffs-Appellants have prepared a package of detachment questions according to §117.6. The procedure for annexation of territory to a city and the procedure for detachment of territory from a city according to §117.6 were exactly the same. In *Walsh* the proposed boundary changes were submitted separately to the districts affected, and the votes were counted according to the provisions of §117.9. Because the petition presented a package of proposed boundary changes, each proposal had to be approved in the appropriate district to be affected in order for the boundary changes to become effective. According to the holding in *Walsh*, the two boundary changes presented as a package proposition in the case currently before the Court would have to be approved in both of the districts to be affected. Each proposed boundary change question in *Walsh* was submitted to the appropriate district to be affected, consisting of the whole of each city, village, or township from which territory was to be taken or to which territory

was to be annexed. Just because the various vote counting provisos in §117.9 were deleted by the Legislature doesn't mean the district to be affected by a boundary change question should be interpreted differently. Regardless of how the votes were counted in *Walsh*, it is clear that every boundary change question was submitted to the corresponding district to be affected, which plainly was determined to consist of each political unit from which territory was to be taken or to which territory was to be annexed. The same law that applied in 1959 applies today; the detachment question that would take territory from the City of Richmond and annex it to the Township of Casco must be submitted to the electors of Richmond and Casco, which compromise the district to be affected. The detachment question that would take territory from the City of Richmond and annex it to the Township of Columbus must be submitted to the electors of Richmond and Columbus, which the district to be affected.

In *Collins v Detroit*, 195 Mich 330; 161 NW 905 (1917) multiple annexation questions were submitted to voters in the City of Detroit and three townships. All of the proposals passed, but there is no description of how the questions were submitted to the electors in each township. The case was dismissed without analysis of §117.9 and the several districts to be affected by the proposals. The practice of utilizing one or more petitions to submit multiple boundary changes to the appropriate districts to be affected was not questioned. However, the correct interpretation of §117.9(1) requires that the district to be affected be determined according to what the Legislature provided: ***the district to be affected consists of each unit of local government from which territory is to be taken, or to which territory is to be annexed by the question to***

be submitted to the electorate. *Collins, Walsh,* and *Hare* illustrate how multiple boundary changes can be proposed in one petition under the Home Rule Cities Act, but every proposed change of boundaries must be presented to the district to be affected as defined by the Legislature.

Appellants incorrectly place great weight and reliance upon *Williamston v Wheatfield Twp*, 142 Mich App 714, 718; 370 NW2d 325 (1985), in which the Court of Appeals issued a per curiam decision declining to interpret §117.9(1), because "There is no ambiguity in the detachment procedure provided for by the home rule cities act." *Williamston*, page 718. That was easy to conclude when only a single detachment proposal was presented. The complex problems in determining the district to be affected and the manner in which votes are to be counted based on multiple proposals and multiple jurisdictions were not considered or decided. The facts of the present case challenge the logic and accuracy of the decision in *Williamston v Wheatfield Twp*, supra, because multiple districts to be affected require a separate ballot proposal for each district to be affected by each proposal. *Williamston v Wheatfield Twp* should be overruled. Even though §117.9 and all of the State Boundary Commission Act make no reference to the detachment of city territory to a township pursuant to §117.6, the Court of Appeals ruled that "the district to be affected" in a detachment proposal submitted to the electors under §117.6 was defined by the Legislature in §117.9, which, as amended, described an incorporation, consolidation or change of boundaries submitted to the

State Boundary Commission, rather than detachment of city territory to a township![3] Indeed, §117.9 transferred annexation (of township or village territory to a home rule city) procedures out of the Home Rule Cities Act and into the State Boundary Commission Act. The Court of Appeals did not consider or decide the question of combining two distinct detachment proposals into a single ballot question, thereby purportedly determining through artful petition drafting the district to be affected, who can sign the petition, who can vote on the proposals, and how the votes should be counted. In *Williamston*, only one detachment proposal was presented in the petition, only one township was involved in the proposed detachment, only one township was included in the district to be affected, only one township was included in the area in which votes were cast and counted, and no enclave could be created by the proposal. The present case is different on all five counts, with two distinct detachment proposals in one petition, involving two townships in two detachment proposals, two townships in two districts to be affected, two townships in the area in which all votes are proposed to be counted collectively, and an enclave[4] to be created if one proposal is approved and the other is rejected. Contrary to the claims and arguments of advocates for the double detachment proposal, the rationale and holding in *Williamston* are inapposite.

MCL 117.11 describes the general procedure for initiating a ballot question by petition when "the territory to be affected by any proposed incorporation, consolidation

---

[3] This portion of the analysis by the Court of Appeals in *Williamston* was unsound.

[4] Appellants admitted and argued in the Court of Appeals that the creation of an enclave would result if one detachment proposal were approved (Casco) without the other (Columbus), but abandoned that argument at the Supreme Court level, probably because the holding in *Saginaw v Board of Supervisors of Saginaw County*, 1 Mich App 65; 134 NW2d 38 (1965) would require that their petition be found invalid.

or change is situated in more than one county" and for submitting the question "to the electors of the district to be affected."

> When the territory to be affected by any proposed incorporation, consolidation or change is situated in more than 1 county the petition hereinbefore provided shall be addressed and presented to the secretary of state, with 1 or more affidavits attached thereto sworn to by 1 or more of the signers of said petition, showing that the statements contained in said petition are true, ***that each signature affixed thereto is the genuine signature of a qualified elector residing in a city, village or township to be affected by the carrying out of the purposes of the petition*** and that not less than 25 of such signers reside in each city, village or township to be affected thereby. The secretary of state shall examine such petition and the affidavit or affidavits annexed, and if he shall find that the same conforms to the provisions of this act he shall so certify, and transmit a certified copy of said petition and the accompanying affidavit or affidavits to the clerk of ***each city, village or township to be affected by the carrying out of the purposes of such petition,*** together with his certificate as above provided, and a notice directing that at the next general election occurring not less than 40 days thereafter ***the question of making*** the incorporation, consolidation or ***change of boundaries petitioned for, shall be submitted to the electors of the district to be affected,*** and if no general election is to be held within 90 days the resolution may fix a date preceding the next general election for a special election on the question. ***If he shall find that said petition and the affidavit or affidavits annexed thereto do not conform to the provisions of this act he shall certify to that fact, and return said petition and affidavits to the person from whom they were received, together with such certificate.*** The several city, village and township clerks who shall receive from the secretary of state the copies and certificates above provided for shall give notice of ***the election to be held on the question of making the proposed*** incorporation, consolidation or ***change of boundaries*** as provided for in section 10 of this act.

There are a few references in §117.11 deserving of close examination. Each signature on a petition must be "of a qualified elector residing in a city, village or township to be affected by the carrying out of the purposes of the petition." A certified copy shall be sent "to the clerk of each city, village or township to be affected by the carrying out of the purposes of such petition." **"[T]hereafter the question of making the... change of boundaries petitioned for, shall be submitted to the electors of the district to be affected."** The clerks shall give notice "of the election to be held on the question of making the proposed... change of boundaries as provided for in Section 10 of this act." **The purposes of the petition (incorporation, consolidation, or change of boundaries) are not the same, and not so narrow, as "the question of making the proposed change of boundaries petitioned for."** It is patently obvious that "the question of making the...change of boundaries petitioned for, shall be submitted to the electors of the district to be affected." It is "the question of making the ... change of boundaries petitioned for" that determines the district to be affected, rather than the combination of questions or proposed changes in the petition. The question necessarily describes the city from which territory is to be detached, and the township to which territory is to be annexed.[5] The operation of §117.11 turns on the proper determination of the district to be affected not only by the general purposes of the petition, but more specifically by every proposed change of boundaries within the petition. "[T]he question of making the...change of boundaries petitioned for, shall be submitted to the electors of the

[5] Most of the reported cases on §117.6 and §117.9 relate to detachment of territory from townships and annexation of the territory to cities, which is the same petition and vote procedure now sought to be employed by Plaintiffs-Appellants.

district to be affected" by the question, and clerks "shall give notice of the election to be held on the question of making the proposed change of boundaries." §117.11. Then the election is held in "the district to be affected by every such proposed...change of boundaries" which "shall be deemed to include the whole of each city, village, or township from which territory is to be taken or to which territory is to be annexed." §117.9. There is no provision authorizing the submission of a proposed change of boundaries between the City of Richmond and Casco Township to the electors of Columbus Township, just because another proposed change of boundaries between the City of Richmond Columbus Township was included in the petition.

Other sections of the Home Rule Cities Act must be analyzed to find the authority for the petition. It is only when "the territory to be affected" by the contents of the petition "hereinbefore provided" is "in more than 1 county" that the Secretary of State is called "to examine such petition and the affidavit or affidavits annexed." §117.11. The words "hereinbefore provided" indicate the statutory authorization for the petition is not within §117.11. However, the statutorily imposed role of the Secretary of State is stated plainly:

> The secretary of state shall examine such petition and the affidavit or affidavits annexed, and ***if he shall find that the same conforms to the provisions of this act he shall so certify*** ... and a notice directing that ... ***the question of making the*** incorporation, consolidation or ***change of boundaries petitioned for, shall be submitted to the electors of the district to be affected...***

The narrow issue before the Supreme Court is whether or not the Secretary of State correctly determined that the petition did not conform "to the provisions of this act."

The answer is not entirely within §117.11. Statutory authorization for the petition and vote on a proposed boundary change is found in §117.6.

> Cities may be incorporated or ***territory detached therefrom or added thereto***, or consolidation made of 2 or more cities or villages into 1 city, or of a city and 1 or more villages into 1 city, or of 1 or more cities or villages together with additional territory not included within any incorporated city or village into 1 city, ***by proceedings originating by petition therefore signed by qualified electors who are freeholders residing within the cities, villages, or townships to be affected thereby...***

Petitions to incorporate, consolidate, annex territory to a city, and detach territory from a city, were authorized in §117.6. The key language is the same as when adopted in 1909. It is important to recognize what the Legislature was attempting to accomplish in adopting the Home Rule Cities Act in 1909, establishing general law procedures for incorporating, consolidating, and changing the boundaries of cities. Up until 1909, the Michigan Legislature routinely incorporated, consolidated, and changed the boundaries of cities, as well as other units of local government. City charters were adopted and amended by the Michigan Legislature. The City of Richmond was incorporated as a village by 1879 LA 306, *21b*. It was incorporated as a city in 1964 without a change of boundaries by an election question "submitted to the qualified electors of the Village of Redmond, the district to be affected by such proposed incorporation." *24b*.

Section 117.6 is one part of the Home Rule Cities Act, a comprehensive piece of legislation adopted on the heels of the 1908 Constitutional Convention, and Const 1908, art 8, §20, with emphasis added:

> **The legislature shall provide by a general law for the incorporation of cities,** and by a general law for the incorporation of villages; such general laws shall limit their rate of taxation for municipal purposes, and restrict their powers of borrowing money and contracting debts.

This was in marked contrast to the pattern of incorporating cities and villages by local acts of the Legislature, which was criticized at the Constitutional Convention.

> The foregoing is an entirely new section designed to work a wholesome legislative reform. One of the greatest evils brought to the attention of the Convention was the abuses practiced under local and special legislation. The number of local and special bills passed by the last legislature was four hundred fourteen, not including joint and concurrent resolutions. The time devoted to the consideration of these measures and the time required in their passage through the two houses imposed a serious burden upon the state. This section taken in connection with the increased powers of local self-government granted to cities and villages in the revision seeks to effectively remedy such condition. This provision is believed to be far-reaching in its consequences. The evils of local and special legislation have grown to be almost intolerable, introducing uncertainty and confusion into the laws, and consuming the time and energy of the legislature which should be devoted to the consideration of measures of a general character. By eliminating this mass of legislation, the work of the legislature will be greatly simplified and improved.

Debates, Constitutional Convention, 1908, Vol 2, pp 1422-1423. In Article 8, pertaining to local government, new sections were added for the benefit of cities and villages. The criticism of local acts took on state constitutional dimensions and definition in Const 1908, art 5, §30:

> The Legislature shall pass no local or special act in any case where a general act can be made applicable, and whether a general act can be made applicable shall be a judicial question. ***No local or special act,*** excepting acts

> repealing local or special acts in effect January 1, 1909 and receiving a 2/3 vote of the legislature ***shall take effect until approved by a majority of the electors voting thereon in the district to be affected.***

Emphasis added. The same basic prohibition against local or special acts is reflected in Const 1963, art IV, §29, with emphasis added:

> The legislature shall pass no local or special act in any case where a general act can be made applicable, and whether a general act can be made applicable shall be a judicial question. ***No local or special act shall take effect until approved*** by two-thirds of the members elected to and serving in each house and ***by a majority of the electors voting thereon in the district affected.*** Any act repealing local or special acts shall require only a majority of the members elected to and serving in each house and shall not require submission to the electors of such district.

The "district to be affected" in the Home Rule Cities Act parallels Const 1908, art 5, §30, and Const 1963, art IV, §29. The state constitutional "district to be affected" was the district to be affected by the object of a local or special act of the Legislature. In the Home Rule Cities Act, the phrase applies to the object of every boundary change proposed within a petition, as well as the object of every proposed incorporation or consolidation involving a city, village, or township from which territory is to be taken or to which territory is to be annexed by the question to be submitted to the electorate.

Reading the sections together, §117.6 authorizes petitions for particular purposes and specifies who must sign them. §117.8 describes how the petition is submitted to the county board of supervisors for review and scheduling of an election. §117.11 is merely the corollary to §117.8 that must be followed when "the territory to be affected" by the petition "is situated in more than 1 county." According to §117.8, if the county board of

supervisors determines that the "petition or the signing thereof does not conform to this act" then "no further proceedings pursuant to said petition shall be had." If the county board of supervisors determines that the "petition conforms in all respects to the provisions of this act" then the board shall "provide that the question of making the proposed incorporation, consolidation or change of boundaries shall be submitted to the qualified electors of the district to be affected at the next general election." §117.11 provides that "***the question of making the incorporation, consolidation, or change of boundaries petitioned for, shall be submitted to the electors of the district to be affected.***" It is the boundary change question that specifies the city, village, or township "from which territory is to be taken or to which territory is to be annexed," and it is the boundary change question that triggers the Legislature's mechanism for determining the district to be affected.

MCL 117.9(1) of the Home Rule Cities Act provides:

> ***The district to be affected by every such proposed*** incorporation, consolidation, or ***change of boundaries shall be deemed to include the whole of each city, village, or township from which territory is to be taken or to which territory is to be annexed.***

This specific language mirrors Const 1908, art 5, §30 and has been present since adoption of the Home Rule Cities Act in 1909. In 1970 the Legislature amended §117.9 extensively, without modifying the specific language quoted above. The amendment was part of the Legislature's larger effort to end territorial turf wars fought by units of local government at the ballot box, primarily in circumstances involving petitions for detachment of territory from townships and annexation of the territory to cities. Rather

than submit proposals for annexation to the qualified electors of the district to be affected, all of such petitions were redirected to the newly created Boundary Commission. The Michigan Supreme Court summarized the 1968 and 1970 changes to the Home Rule Cities Act.

> Before creation of the State Boundary Commission, the procedures for the incorporation, consolidation or alteration of boundaries of cities were set forth in the home rule cities act.[6] By enactment separate from that act, the commission was created in 1968 with authority limited to incorporation and consolidation of cities and villages.[7] The powers of the commission were extended to annexations by a 1970 amendment of the annexation procedures of the home rule cities act.[8]

Midland Twp v Boundary Commission, 401 Mich 641, 650; 259 NW2d 326 (1977). §117.9 as amended terminated the petition and vote procedure for annexation of territory to a city.

> After March 31, 1971, and so long as Act No. 191 of the Public Acts of 1968 is in effect, annexation of territory from a township or village to a home rule city shall be as provided in this section and no other means of annexation shall be effective.

However, absolutely no provision was made by the Legislature in §117.9 and the entire State Boundary Commission Act for the detachment of city territory by petition and vote, §123.1001 *et seq.* Township territory can be annexed to a city by order of the Boundary Commission, but city territory cannot be detached and annexed to a township by order of the Boundary Commission. The law is substantially different,

---

[6] 1909 PA 279; MCLA 117.1 et seq; (MSA cite omitted)
[7] 1968 PA 191; MCLA 123.1001 et seq; (MSA cite omitted)
[8] 1970 PA 219; MCLA 117.9; (MSA cite omitted)

probably because the Legislature did not expect or intend that detachment of city territory by petition and vote would survive the transfer of annexation of township territory by cities to the Boundary Commission, with the Boundary Commission Act providing a referendum on annexation of township territory to a city. No good justification can be offered for an administrative agency procedure to detach township territory and annex it to a city, complete with statutory standards and judicial review, as compared to a petition and vote procedure to detach city territory and annex it to a township under the Home Rule Cities Act. Nevertheless, that is the state of the law as provided by the Michigan Legislature and as interpreted by the Court of Appeals in *Williamston v Wheatfield Twp*, supra, which the City of Richmond contends was decided incorrectly.

The Michigan Supreme Court described the troubled history of §117.9 in *Shelby Twp v Boundary Commission*, 425 Mich 50, 58; 387 NW2d 792 (1986), emphasis added.

> **Prior to 1970, all annexations had to be approved by the electors of the affected district, which was defined as "the whole of each city, village, or township from which territory is to be taken or to which territory is to be annexed," MCL 78.5, 117.9; MSA 5.1515, 5.2088.** A majority vote in favor of the annexation was required, first, in the area to be annexed, and, second, in the remainder of the affected district "voting collectively." Id. These referenda elections frequently generated a great deal of divisiveness and litigation. See, e.g., *Goethal v Kent Co Supervisors*, 361 Mich 104; 104 NW2d 794 (1960); *Genesee Twp v Genesee Co*, 369 Mich 592; 120 NW2d 759 (1963); *Taylor v Dearborn Twp*, 370 Mich 47; 120 NW2d 737 (1963); *Saginaw v Saginaw Co Bd of Supervisors*, 1 Mich App 65; 134 NW2d 378 (1965); *Niles Twp v Berrien Co*, 5 Mich App 240; 146 NW2d 105 (1966).

The Supreme Court also described the effect of the 1970 amendment.

> Under the 1970 amendment giving the commission authority over annexations, §9 of the Home Rule Cities Act, MCL 117.9; MSA 5.2088, became the exclusive means of "annexation of territory from a township or village to a home rule city," MCL 117.9(11); MSA 5.2088(11). With a few minor exceptions, all annexations had to be approved by the commission which, in processing and deciding on requested annexations, had the broad discretion delegated to it in 1968 PA 191 with respect to petitions for incorporation. MCL 117.9(2); MSA 5.2088(2).

Shelby Twp v Boundary Commission, pages 59-60. Nothing was done by the Legislature to modify the district to be affected by every such proposed change of boundaries, which has been described in §117.9 since the Home Rule Cities Act was adopted in 1909. Indeed, the deletion of the voting provisos made every proposed boundary change under the Home Rule Cities Act (now only consisting of the detachment of city territory) subject to the approval of the qualified electors in the district to be affected, without any special voting proviso by which electors in a portion of one of the political units were excluded from voting on a proposal. Plaintiffs-Appellants seek to extend voting privileges to electors outside of the actual district to be affected by two boundary change proposals involving two townships. This is contrary to the express terms and statutory scheme of the Home Rule Cities Act, by which incorporations, consolidations, and boundary change proposals were to be originated and decided by the electors within the districts to be affected.

Illegal vote dilution

Allowing the electors in Casco Township to vote on the proposal to detach city territory to Columbus Township is irrational, and constitutes illegal dilution of the voting strength of the electors of the City of Holland. *Duncan v Coffee County*, 69 F3d 88 (1995). Casco Township electors have no substantial interest in the affairs of Columbus Township, and permitting Casco Township electors to vote on the Richmond-Columbus boundary change would be illegal. The same is true with regard to Columbus Township voters being permitted to vote on the Richmond-Casco Township boundary change. See *Board of Commissioners of Shelby County v Burson*, 122 F3d 244 (1997).

II. THE PETITION DOES NOT CONFORM TO THE HOME RULE CITIES ACT.

Summary of Argument

Casco Township electors lack the statutorily defined qualifications to sign a petition and vote on a proposal to detach territory from the City of Richmond to Columbus Township, and Columbus Township electors lack the statutorily defined qualifications to sign a petition and vote on a proposal to detach territory from the City of Richmond to Casco Township.

Standard of Review

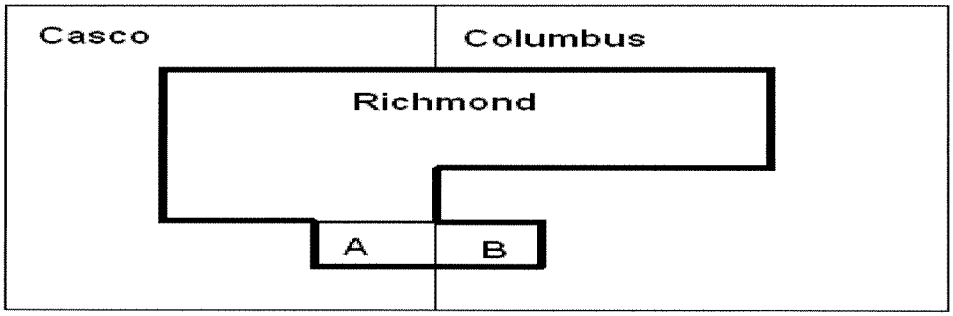
"Questions of statutory interpretation are questions of law, which will be reviewed de novo." *In re MCI Telecommunications*, 460 Mich 396, 413; 596 NW2d 164 (1999).

The petition does not conform to the provisions of the Home Rule Cities Act for the purpose of ordering and conducting an election, because unqualified electors signed the petition, and unqualified electors will vote on the proposed boundary changes. Casco Township electors are not "qualified" (within the meaning of §117.6) to sign a petition in support of a proposal to detach territory from the City of Richmond to Columbus Township. Columbus Township electors are not "qualified" (within the meaning of §117.6) to sign a petition in support of a proposal to detach territory from the City of Richmond to Casco Township. Combining the two detachment proposals in a single petition does not modify the statutory prerequisite of obtaining signatures from "qualified electors," and does not qualify electors in one township to sign a petition for detachment of city territory to another township. This fundamental component of the statutory procedure created in 1909 renders Plaintiffs-Appellants' petition invalid, and is dispositive of the entire case before the Supreme Court. The rudimentary defect in Plaintiffs-Appellants' petition must be recognized as a violation of the statutory procedure for originating and deciding boundary change questions by statutorily qualified electors.

Allocating signatures on the petition as drafted and circulated to one detachment proposal or the other would be an idle exercise in speculation and conjecture, which the Secretary of State chose not to do. The Supreme Court should not substitute its judgment for that of the Secretary of State in analyzing the petition and counting the signatures by "qualified electors." There is no clear legal duty imposed on the Secretary of State to allocate signatures of Casco Township electors to the Casco Township

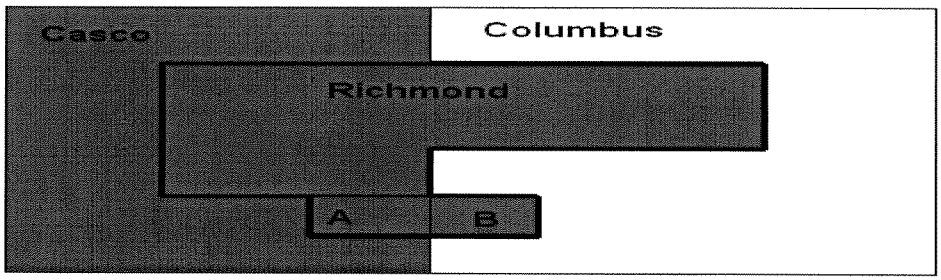
proposal, or Columbus Township electors to the Columbus Township proposal. Indeed, there is no method for doing so. Plaintiffs-Appellants have offered none.

An illustration of the issues



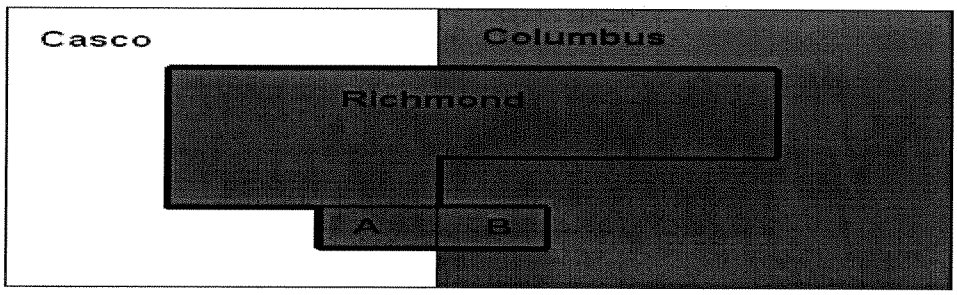
Should A be detached from the City of Richmond?

> The district to be affected is all of Casco Township and the City of Richmond. The petition is circulated and the election is held within the highlighted area.



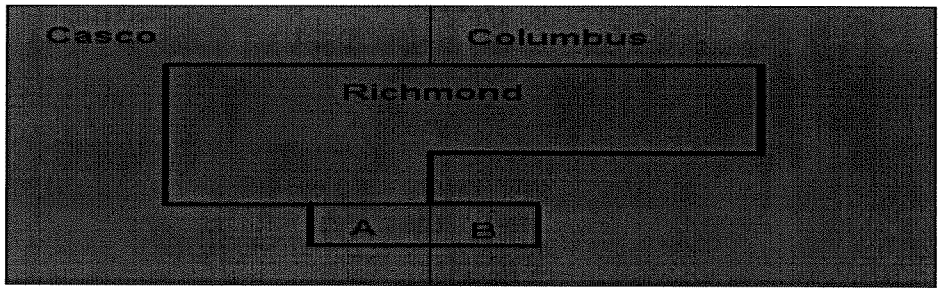
Should B be detached from the City of Richmond?

> The district to be affected is all of Columbus Township and the City of Richmond. The petition is circulated and the election is held within the highlighted area.



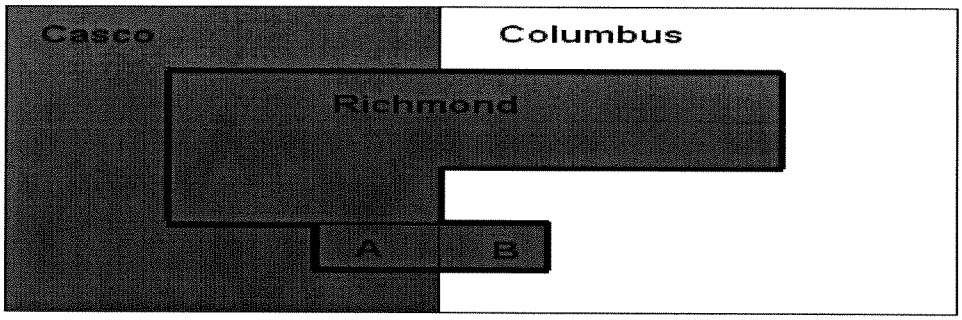
Should A and B be detached from Richmond?

The district to be affected is all of Casco Township, Columbus Township, and the City of Richmond. **(???)**. The petition is circulated and the election is held within the entire highlighted area. **(???)**



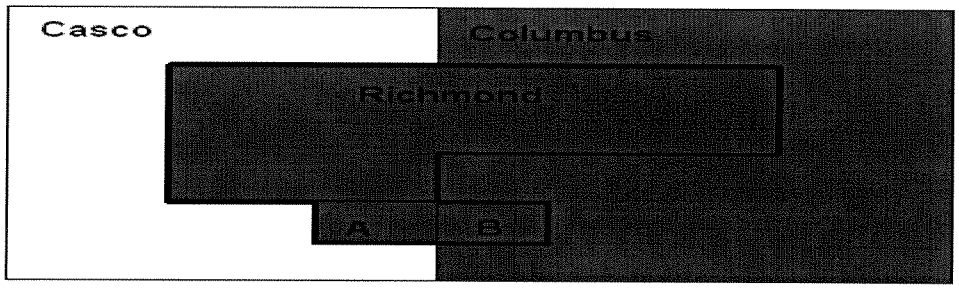
OR

One district to be affected is all of Casco Township and the City of Richmond. The petition is circulated and the election is held within the highlighted area.



AND

Another district to be affected is all of Columbus Township and all of the City of Richmond. The petition is circulated and the election is held within the highlighted area.



The City of Richmond contends that combining two distinct detachment proposals in a petition involving three different political jurisdictions still produces two districts to be affected by the two proposed changes of boundaries. The approach advocated by Plaintiffs-Appellants incorrectly produces different districts to be affected, and different blocks of purportedly qualified electors, depending on whether the two detachment proposals are submitted singly or in combination. Plaintiffs-Appellants' approach is inherently flawed, and contrary to the applicable provisions of the Home Rule Cities Act, being §117.6, §117.8, §117.9, and §117.11.

There is no legal or logical reason to submit to the electors of Columbus Township the proposal to detach A from the City of Richmond. And there is no legal or logical reason to submit to the electors in Casco Township the proposal to detach B from the City of Richmond. Nothing in the Home Rule Cities Act suggests that electors in one township are qualified to sign a petition to detach city territory to another township. The combination of two distinct detachment proposals into a single ballot question submitted to a single district to be affected involving three political jurisdictions is a serious misconstruction of the Home Rule Cities Act. The Secretary of State is charged with the statutory responsibility of reviewing petitions for detachment and ordering elections in the districts to be affected, and the Secretary of State correctly decided not to allow the proposed election.

The petition is not legally sufficient because it includes the signatures of statutorily unqualified electors.

The Secretary of State questioned the validity of the petition based on the qualifications of those who signed. Appellants' Appendix *37a*. The detachment proceeding may be originated ***"by petition therefore signed by qualified electors who are freeholders residing within the cities, villages, or townships to be affected thereby."*** §117.6. Plaintiffs-Appellants' petition combined two detachment proposals so that signatures of Casco Township electors might be counted for a proposal to detach territory from the City of Richmond to Columbus Township, and signatures of Columbus Township electors might be counted for a proposal to detach territory from the City of Richmond to Casco Township. Submitting the same two detachment proposals separately would have required sufficient Casco Township electors to sign for the proposed detachment of City of Richmond territory to Casco Township, and sufficient Columbus Township electors to sign for the proposed detachment of City of Richmond territory to Columbus Township, as specified in §117.6. Plaintiffs-Appellants' petition as drafted, circulated and submitted, leaves the Secretary of State unable to determine how many statutorily qualified Casco Township electors signed the petition in support of the proposal to detach City of Richmond territory to Casco Township, and how many statutorily unqualified Casco Township electors signed in support of the proposal to detach City of Richmond territory to Columbus Township. There is no way to correct the petition after it has been drafted, circulated, and submitted.

These two boundary change proposals involve two districts to be affected.

The City of Richmond asserts that two detachment proposals spanning three political jurisdictions really involve two different districts to be affected, and it is the districts to be affected that cannot be combined to gather signatures and votes from unqualified electors; §117.6, §117.8, §117.11, and §117.9. Casco Township residents cannot petition for the detachment of city territory to Columbus Township, and Columbus Township residents cannot petition for the detachment of city territory to Casco Township, according to §117.6. Combining the two detachment proposals in one petition does not grant qualifications to otherwise statutorily unqualified electors.

Can Casco Township electors vote on the proposal to detach part of the City of Richmond to Columbus Township?

The City of Richmond claims there is no logical or legal reason to ask the electors in Casco Township to vote on the proposal to detach part of the City of Richmond to Columbus Township, *2b*. Because the electors of Casco Township are not within the district to be affected by the proposal to detach part of the City of Richmond to Columbus Township, they should not vote on the proposal; they are not qualified electors as required by §117.8 and §117.11. Statutory qualifications of the electors cannot be modified by combining boundary change questions in a petition.

Can Columbus Township electors vote on the proposal to detach part of the City of Richmond to Casco Township?

The City of Richmond claims there is no logical or legal reason to ask the electors in Columbus Township to vote on the proposal to detach part of the City of Richmond to Casco Township. Because the electors of Columbus Township are not within the

district to be affected by the proposal to detach part of the City of Richmond to Casco Township, they should not vote on the proposal; they are not qualified electors as required by §117.8 and §117.11. Again, statutory qualifications of the electors cannot be modified by combining boundary change questions in a petition.

Are the votes to be counted collectively in one or two districts to be affected?

The votes must be counted in the actual districts to be affected by the two distinct detachment proposals. The electors in Casco Township and the City of Richmond vote on the proposal to detach city territory to Casco Township. The electors in Columbus Township and the City of Richmond vote on the proposal to detach city territory to Columbus Township. This is the result compelled by §117.8, §117.11, and §117.9.

Advocates of this detachment effort obviously combined the two detachment proposals in a single petition, hoping that signatures and votes in both townships could be combined and counted in favor of both proposals for detachment, when in actuality two distinct proposals and two distinct districts to be affected are involved.

The possible creation of an enclave invalidates the petition.

In *Saginaw v Saginaw County Board, 1 Mich App 65; 134 NW2d 378 (1965)*, petitions for annexation of multiple tracts from one township were held to be invalid due to the potential creation of an enclave, and gerrymandering of another tract to exclude all qualified electors.[9] The Court of Appeals ruled that the creation of an enclave by the approval of one proposal and the defeat of another ***invalidated*** the petitions so no

[9] The petition in this case could be held invalid on gerrymandering grounds as well, due to the attempted reliance on the signatures of unqualified electors, the votes of unqualified electors, the dilution of the voting strength of the qualified electors in the City of Richmond, and the exclusion of City voters from voting on each proposal separately.

election could be held. In the present case Plaintiffs-Appellants briefed the same point to advocate reaching a different conclusion in the Court of Appeals, claiming that the problem of creating an enclave by the approval of one proposal and the defeat of another is resolved by combining the two proposals in a single petition and creating a single district to be affected. However, Plaintiffs-Appellants' argument was without merit, because the goal of avoiding an enclave does not qualify the otherwise unqualified electors in Casco Township to sign a petition for the proposal to detach City of Richmond territory to Columbus Township, or to vote on the question to detach City of Richmond Territory to Columbus Township.

The holding in *Saginaw* prevents the separation of the two detachment proposals into two ballot questions to be submitted to the two districts actually affected, because contiguity for the territory proposed to be annexed to Columbus Township will be destroyed if the territory proposed to be annexed to Casco Township is detached from the City of Richmond. Appellants' Appendix *4b*. Contiguity is required for annexation of township territory to a city under the Home Rule Cities Act and the procedure for annexing or detaching territory pursuant to a petition and vote according to §117.6. *Owosso Township v Owosso*, 385 Mich 587; 189 NW2d 421 (1971). The courts have examined "proposed annexations to determine whether they were reasonably contiguous with the city and whether they created illegal enclaves.[10] *Charter Township of Pittsfield v City of Ann Arbor*, 86 Mich App 229, 233; 274 NW2d 466 (1978). "An enclave

[10] In this case, the detachment of territory A from the City of Richmond, and the annexation of A to Casco Township, would create an illegal enclave of City territory B in Columbus Township.

is defined as a tract of territory enclosed within a foreign territory." *Charter Township of Pittsfield,* page 233. The admitted potential consequence of an enclave caused by the approval of one detachment proposal and the rejection of the other renders the petition and questions invalid. Following the holding in *Saginaw* and applying it to this case would result in finding that the petition is invalid, even if the two questions were to be submitted to the two districts to be affected. An alternative available to Plaintiffs-Appellants would be to petition for the detachment of city territory to Columbus Township first, and if that is approved petition for the detachment of city territory to Casco Township second, avoiding the possibility of creating an enclave.

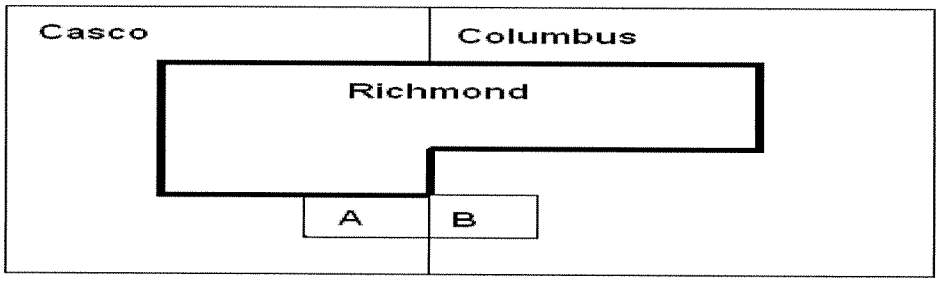
The holding and rationale in *Renne v Oxford Township* are consistent with the decision of the Secretary of State.

The amicus Michigan Townships Association cites *Renne v Oxford Twp*, 380 Mich 39; 155 NW2d 852 (1968) as authority for the general proposition that a "district to be affected" may be larger (or smaller) than a particular political subdivision. But the *Renne* case involved a challenge to the statutory process for conducting a zoning referendum, rather than a proposal for boundary changes stretching over three different units of local government. And the Supreme Court identified the same critical concept that controls the present case: ***"a question shows as affecting the district or territory in which they reside, even though they do not reside in the specific political subdivision which ... has initiated the election in question."*** *Renne,* pages 852-853. It is the ***question*** that determines the district to be affected, not necessarily "the specific political subdivision[s] that initiated the election in question." The analysis in *Renne* leads to the

inescapable conclusion that the two proposals for boundary changes must be submitted to the two actual districts to be affected by each proposal, rather than all of "the specific political subdivision[s] that initiated the election in question." The holding and rationale in *Renne* support, rather than undermine, the decision of the Secretary of State. The proposal to detach territory from the City of Richmond to Casco Township does not affect Columbus Township, and the proposal to detach territory from the City of Richmond to Columbus Township does not affect Casco Township. It is the question that determines the district to be affected, not the form of the petition or the political subdivisions generating the proposals.

Comparison of boundary change methods and elections provided by the Legislature.

It is worthwhile to consider the example of petitions to detach and annex the same tracts of territory involving one city and two townships according to the Home Rule Cities Act and the State Boundary Commission Act.



Assuming a petition is prepared and submitted requesting that A and B be detached from Casco and Columbus Townships and annexed to the City of Richmond, and the Boundary Commission approves, a referendum requested under §123.1011b[11]

[11] §123.1011b. Resolution for referendum on question of annexation; result; referendum; approval of annexation.

would require approval by the voters in each requesting jurisdiction voting separately, i.e., Casco Township, Columbus Township, and the City of Richmond, like the voting provisos that used to be part of §117.9. There is no specific direction from the Legislature on how the question would be presented to the electors of Casco and Columbus Townships, except that the votes of the affected political units will be counted separately, and the electors in each political unit must approve. A referendum requested by petition under §117.9(5)[12] would require approval of the voters in the area detached and annexed, and the voters in the balance of the township, and the voters in

---

Sec. 11b. (1) If the commission, after determining the validity of a petition or resolution for annexation, has ordered a public hearing pursuant to section 9 of Act No. 279 of the Public Acts of 1909, as amended, being section 117.9 of the Michigan Compiled Laws, and if on the date the petition or resolution was filed more than 100 persons resided in the area proposed for annexation, the legislative body of each city and township affected by the proposed annexation may pass a resolution calling for a referendum on the question of annexation. If a copy of each resolution passed by the legislative body of each affected city and township is filed with the commission and the commission approves the annexation, the commission, in its order approving the annexation, shall order that a referendum on the question of annexation be held in each affected city and township. If a resolution calling for a referendum on the question of annexation is not passed by each affected city and township and filed with the commission, the referendum and election shall be subject to section 9(5) of Act No. 279 of the Public Acts of 1909, as amended. However, if a referendum in each affected city and township is ordered pursuant to this section and if the majority of the electorate voting on the question in each city and township in which a referendum was held, voting separately, approve the annexation, the annexation shall be effective on a date set by order of the commission, otherwise the annexation shall not take effect. Effective date. (2) This section shall apply to all petitions or resolutions for annexation filed with the commission after May 1, 1982. Alternative process. (3) This section is an alternative to the referendum and election process provided for in section 9(5) of Act No. 279 of the Public Acts of 1909, as amended, and does not supersede section 9(5) of Act No. 279 of the Public Acts of 1909, as amended.

[12] (5) If an annexation is approved, and if on the date the petition or resolution was filed more than 100 persons resided in the area approved for annexation, the commission shall send a certified copy of its order to the clerk of each county, city, village, and township affected and to the secretary of state. The commission's order shall become final 30 days after the date of the order unless within that 30 days a petition is filed with the commission which contains the signatures of at least 25% of the registered electors residing in the portion of the territory approved for annexation, in the annexing city or in the balance of the township. The commission after verifying the validity of any referendum petition shall order that a referendum on the question of annexation be held in each area from which a valid petition was filed. If a valid petition is not filed within the 30 days or if the majority of the electorate voting on the question in each area in which a referendum was held, voting separately, approve the annexation, the annexation shall be effective on a date set by order of the commission, otherwise the annexation shall not take effect.

the annexing city, voting separately, if a valid petition is received from each specified area. There is no direction from the Legislature at all on conducting a boundary change referendum in multiple townships. The statutory language reflects an assumption by the Legislature that boundary changes will be subjected to a referendum in a single district to be affected, with no more than two political units in the district. Under §117.9(5), the electors in the area annexed can petition for a referendum, as can the electors in the annexing city, and the electors "in the balance of the township". The votes are tallied separately, and the electors in each area must approve the annexation for it to become effective.

Once detached, annexed by order of the Boundary Commission, and approved according to either one, or both, of the voting provisions in §123.1011b and §117.9(5), the exact same tracts could be the subject of petitions to detach from the City of Richmond and annex to Casco and Columbus Townships, pursuant to §117.6[13]. That is the scenario in the pending case, except no boundary change referendum was requested or held, apparently because the 100 person minimum was not met. According to the advocates of detachment of city territory, now the two proposals should be submitted in combination to all three political jurisdictions, and the votes should be counted collectively. But §117.9(1) contains absolutely no description of how proposals for the detachment of territory from a city should be submitted to the electorate, and how the votes should be counted, i.e., collectively or separately, other than the sentence

[13] This is the result of the holding in *Williamston v Wheatfield Township*, supra, that the City of Richmond claims was error; the decision should be overruled.

describing the "district to be affected." Presumably the Legislature intended the "district to be affected" phrase to resolve questions about who could vote on the question to be submitted, with the statutory descriptions of qualified electors to sign petitions, §117.6, qualified electors to vote, §117.8 and §117.11, and the district to be affected by the question, §117.9(1).

Appellants rely on the 1970 amendments to §117.9, but the key language really has not changed at all. When *Cook v Board of Canvassers*, supra, page 153, was decided in 1916, §117.9 was quoted:

> The district to be affected by every such proposed incorporation * * * or change of boundaries shall be deemed to include the whole of each city, village or township from which territory is to be taken or to which territory is to be annexed: Provided, ...

The provisos about how to count votes in various situations of incorporation, consolidation, and annexation followed the key phrases describing the district to be affected. It is the voting details that were deleted by the Legislature in 1970, because there was no longer any need for them. It is impossible to glean from the absence of specific legislative direction on how to count votes on a detachment proposal the general legislative direction to submit the proposal to a district other than the one actually affected. That is exactly what Appellants are advocating, without any substantive basis in the law. That result was rejected by the Court of Appeals, and should be rejected by the Supreme Court.

The fundamental issue in the present case can be analyzed and resolved based on the plain language of §117.9. The petition clearly describes two proposals: the

detachment of City territory to Casco Township and the detachment of City territory to Columbus Township. §117.9 provides: "The district to be affected by every such proposed ... change of boundaries shall be deemed to include the whole of each city, village or township from which territory is to be taken or to which territory is to be annexed." For the first "proposed change of boundaries" "the district to be affected" "shall be deemed to include the whole of each city" [Richmond] "or township" [Casco] "from which territory is to be taken" [Richmond] "or to which territory is to be annexed" [Casco]. For the second "proposed change of boundaries" "the district to be affected" by "such proposed change" "shall be deemed to include the whole of each city" [Richmond] "or township" [Columbus] "from which territory is to be taken" [Richmond] "or to which territory is to be annexed" [Columbus]. The plain language of §117.9 mandates determination of the district to be affected by the actual proposed change of boundaries. Combining two proposals in a single petition does not change the language or effect of §117.9, and certainly does not change the district to be affected by each proposal.

The plain language of §117.9 defines the district to be affected "by every such proposed ... change of boundaries," not by every such petition containing multiple proposed changes of boundaries. It is "every such proposed change of boundaries" that defines and determines the district to be affected, not the petition, form of the petition, or number of proposed boundary changes.

When the Legislature described how to count the votes in §117.9, there was no need to scrutinize and interpret the district to be affected. When the Legislature deleted

instructions on how to count the votes, careful determination of the district to be affected by multiple proposals spanning multiple political units became necessary. The Secretary of State fulfilled her role and decided not to certify the petition. The plain language of the Home Rule Cities Act and the historical and constitutional background of the "district to be affected" in §117.6, §117.8, §117.11 and §117.9 compel the conclusion that it would be a violation of the Home Rule Cities Act to submit detachment proposals to electors outside of the actual district to be affected by each proposal when signing petitions and voting on the proposals.

The consequences of detachment emphasize the importance of a careful determination of the district to be affected by a detachment proposal.

> When land shall be detached from any city ... the moneys, rights, credits and personal property belonging to any city ... the boundary of which may be so changed ... shall be divided between said ... city and township; the ... township to which said territory is attached ... to have such a proportion as the value of the taxable property attached thereto ... bears to the whole value of the taxable property of the city ... from which said territory was detached and the city ... from which territory is detached shall be entitled to the balance of said moneys, rights, credits and personal property, the value of said taxable property to be ascertained from the assessment roll of said city... immediately before such change of boundary ...

MCL §123.1, as excerpted. The debts of the city shall be apportioned between the city and township on the same basis, §123.3. Lands owned by the city shall be sold, and the proceeds divided between the city and township according to the same ratio, §123.2. If the units of local government cannot agree on settlement terms, §123.5 and §123.6, suit can be filed in the circuit court. §123.7.

This statute is old, dating back to 1883 when the Legislature changed the boundaries of cities and townships by special or local acts. The terms still apply to the detachment of territory from a city to a township. The statute does not apply to annexation of township territory to a city. In this case the City of Richmond received no apportionment and division of the assets and debts of Casco and Columbus Townships as part of the annexation ordered by the Boundary Commission. In the event of detachment of the same territory previously annexed, the City of Richmond will be subject to claims based on §123.1 *et seq.* The detachment consequences to the City of Richmond will be distinctly different with respect to each of the two townships depending upon the value of the taxable property in each area proposed to be detached, and the asset and debt structure of each township. So why should Casco Township electors vote on the detachment of territory to Columbus Township, just because two proposals were combined in a single petition? There is no logical, legal, or public policy reason to do so. The only reason to combine the districts to be affected is to grant a political voting advantage to Casco and Columbus Township, which is not a right, goal, or public policy interest mentioned or protected by the Legislature in the Home Rule Cities Act.

III. A WRIT OF MANDAMUS SHOULD NOT HAVE BEEN ISSUED.

Standard of Review

A lower court decision refusing to issue a writ of mandamus is reviewed for an abuse of discretion. *Baraga v State Tax Commission*, 466 Mich 264; 645 NW2d 13 (2002).

Mandamus

> A writ of mandamus will only be issued if the plaintiffs prove they have a "clear legal right to performance of the specific duty sought to be compelled" and that the defendant has a "clear legal duty to perform such act ..." We review a trial court's decision regarding a writ of mandamus for abuse of discretion. Where a central issue in the appeal involves statutory interpretation, which is a question of law, that is reviewed de novo.

In re MCI Telecommunications, supra, pages 443-444, cites omitted.

MCL 117.11 in pertinent part states:

> If (the Secretary of State) shall find that such petition and the affidavit or affidavits annexed thereto, do not conform to the provisions of this Act, he shall certify to that fact, and return said petition and affidavits to the person from whom they were received, together with such certificate.

Because the territory at issue lies in two counties, the Secretary of State is assigned the duty of determining whether the petition conforms to the Home Rule Cities Act or contains incorrect statements. §117.11. The Secretary of State is required to reject petitions if they fail to meet the requirements.

The statute prescribes the duties of the Secretary of State, §117.11, and those duties primarily are ministerial. Determining whether or not the petition conforms to the act may require the exercise of some discretion, especially in a case like this one. However, it is acknowledged that a writ of mandamus was used to compel the setting of an election by the county board of supervisors under the statutory framework at issue in this case. *Attwood v Board of Supervisors of Wayne County*, 349 Mich 415; 84 NW2d 708 (1957).

Plaintiffs-Appellants are entitled to no relief because the Secretary of State acted properly in determining the petition and questions could not be presented to the City of Richmond, Casco Township, and Columbus Township as a single ballot question. The petitions were drawn in violation of §117.6 and §117.11, and the single voting district was contrary to the definition of the district to be affected in §117.9 and §117.11.

It would not be appropriate for the Supreme Court to order the issuance of a writ of mandamus to hold two elections in the two different districts to be affected, because the underlying petition was prepared in violation of §117.6. Electors in Casco Township signed the petition requesting detachment of territory from the City of Richmond and annexation of the territory to Columbus Township. Electors in Columbus Township signed the petition requesting detachment of territory from the City of Richmond and annexation of the territory to Casco Township. This is a fatal flaw that cannot be corrected by the Secretary of State or the Supreme Court. Where the petition does not conform to the requirements of §117.6, no election on the proposal should be held. *Taylor v Nieusma*, 374 Mich 393; 132 NW2d 80 (1965).

If Casco Township electors are not qualified to petition or vote for the detachment of Richmond's territory to Columbus Township in the first instance, they cannot become qualified electors by combining two separate proposals for changes of boundaries in one petition. The form of the petition does not amend the statute.

The trial court opined that the duty of the Secretary of State to act by certifying or ordering the requested election was not clear. (Peter Houk Opinion, page 4), Appellants' Appendix *39a.* The trial court took note of the fact that petitioners could

seek and obtain elections on the two proposed changes of boundaries in the two districts to be affected. The ultimate questions to be presented to the electors of the districts to be affected still can be presented, as long as petitioners comply with the statutory procedure provided by the Legislature.

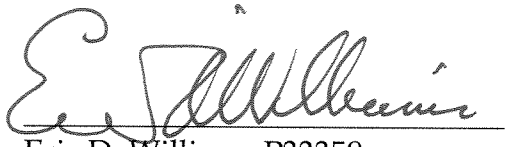
CONCLUSION

The petition is invalid because it relies on signatures from unqualified electors. The boundary change questions must be presented to qualified electors in the districts to be affected by the proposed boundary changes as determined by the Legislature.

RELIEF

The City of Richmond asks the Supreme Court to affirm the decision of the Court of Appeals, and to clarify the statutory basis for requiring only qualified electors to sign the petition and vote on every proposed change of boundaries.

Dated: January 5, 2005



Eric D. Williams P33359
for the City of Richmond
524 North State Street
Big Rapids, MI 49307
(231) 796-8945